

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; Room 5111
Sacramento, CA 95814



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Defining Persistently Dangerous Public Elementary and Secondary Schools

[Notice published May 21, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Program staff will hold a public hearing beginning at **9:00 a.m. on July 6, 2004**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period ends at **5:00 p.m. on July 6, 2004**. The Board will consider only written comments received by the Regulations Coordinator or at the Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
Email: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

Reference: Sections 48900.3, 48915(a)(1), 48915(a)(4), 48915 (c)(1), 48915 (c)(2), 48915 (c)(3), 48915 (c)(4), and 48915 (c)(5), Education Code; Sections 11063-11058, Health and Safety Code; Sections 71, 211, 212, 240, 242, 243, 243(f)(4), 243.4, 261, 2669c), 286, 288, 288(a), 289, 422.6,

422.7, 422.75, 518, and 519, Penal Code; Public Law 107-110, Title IX, Part E, Subpart 2, Section 9532; 18 USC Section 921; 20 USC Section 7911.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Unsafe School Choice Option (USCO) provisions in the federal No Child Left Behind Act of 2001 require that each State receiving funds under this Act must establish and implement a statewide policy that allows students attending a persistently dangerous public elementary school or secondary school to attend a safe public elementary school or secondary school within the local educational agency (LEA), including a public charter school. USCO also requires that the State implement a method of identifying such persistently dangerous schools.

The California State Board of Education has adopted a policy to be used in designating persistently dangerous public schools. Such designations will be based on student expulsion information, as specified in the policy, and incidents of non-student firearm violations. Guidance published by the United States Department of Education with regard to the USCO provisions require States to identify persistently dangerous schools in sufficient time to allow an affected local educational agency to offer the required transfer option to students at least 14 days before the start of the school year, and before the start of each school annually thereafter.

The purpose of these regulations is to clarify and provide guidance on the implementation of the statewide policy definition for designating persistently dangerous schools and to establish related data reporting requirements for public elementary and secondary schools, including charter schools.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None

Effect on small businesses: There is no effect on small businesses because the proposal pertains only to schools. No requirements are placed on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Jerry Hardenburg, Consultant
California Department of Education
Safe and Healthy Kids Program Office
1430 N Street, 6th Floor
Sacramento, CA 95814
Telephone: (916) 319-0920
E-mail: jhardenb@cde.ca.gov

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address indicated above.

The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/re/lr/rr/>.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Jerry Hardenburg, Safe and Healthy Kids Program Office, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 319-0920; fax, (916) 319-0218. It is recommended that assistance be requested at least two weeks prior to the hearing.